

STATE OF MINNESOTA
IN COURT OF APPEALS



Michelle L. MacDonald, et al.,

Appellants,

vs.

Michael Brodkorb, et al.,

Respondents.

O R D E R

A19-0665

Considered and decided by Cleary, Chief Judge; Larkin, Judge; and Bratvold, Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE
FOLLOWING REASONS:**

This appeal was filed on April 30, 2019. Appellants seek review of a March 6, 2019 summary judgment. Appellants' counsel provided court reporter Vanessa Melstrom with a certificate as to transcript that indicated that counsel ordered the transcript on May 7, 2019. On May 22, 2019, the clerk of the appellate courts rejected reporter Melstrom's certificate because it showed an estimated completion date of July 22, 2019, which was more than 60 days after May 7, 2019, which was the date that the transcript purportedly was ordered. *See* Minn. R. Civ. App. P. 110.02, subd. 2(a) (providing that the estimated completion date for the transcript shall not exceed 60 days).

On May 30, 2019, respondents filed a motion for dismissal of the appeal if appellants did not file their brief by May 30, 2019. Respondents alleged that appellants

failed to timely order the transcript, and that appellants' counsel provided the court reporter with a certificate that inaccurately indicated that the transcript was ordered on May 7, 2019. On June 3, 2019, reporter Melstrom filed a letter in which the reporter stated that appellants' counsel did not provide the reporter with a request for transcript until May 21, 2019. On June 6, 2019, a certificate as to transcript was filed. Appellants have not filed a response to the motion to dismiss.

Dismissal of an appeal for noncompliance with the appellate rules is an inappropriate sanction when the failure to follow the rules does not affect the appellate court's jurisdiction and neither prejudices the other party nor delays the appeal. *Boom v. Boom*, 361 N.W.2d 34, 36 (Minn. 1985). In *Boom*, the supreme court specified four questions for this court to consider in the disposition of a motion to dismiss an appeal for failure to comply with a nonjurisdictional requirement. *Id.* at 36. This court is to consider (1) whether the movant has been prejudiced by appellant's failure to comply with the rules, (2) whether appellant demonstrated justifiable cause for the failure to comply, (3) whether the defect has been cured, and (4) whether the underlying appeal is meritorious. *Id.*

In *Boom*, appellant demonstrated no justifiable cause for his noncompliance with the rule requiring the timely filing of a certificate as to transcript. *Id.* The supreme court stated that the court was not in a position to comment on the merits of the appeal. *Id.* Nevertheless, the supreme court held that dismissal of the appeal was an inappropriate sanction because appellant's failure to comply with the rule regarding a certificate of transcript did not delay processing of the appeal or prejudice respondent. *Id.*

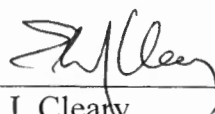
In this case, appellants' counsel was required to order the transcript from the court reporter by May 10, 2019, which was 10 days after the appeal was filed on April 30, 2019. *See* Minn. R. Civ. App. P. 110.02, subd. 2(a). Appellants' counsel did not order the transcript from reporter Melstrom until May 21, 2019. Respondents do not show any prejudice resulting from appellants' counsel's failure to order the transcript until May 21, 2019. Respondents' motion to dismiss does not address the *Boom* factors or demonstrate that the severe sanction of dismissal is warranted.

IT IS HEREBY ORDERED:

1. Respondents' motion to dismiss the appeal is denied.
2. Appellants' late transcript request is granted.
3. The time for court reporter Vanessa Melstrom to complete and deliver the transcript is extended. On or before July 22, 2019, reporter Melstrom shall (a) file the transcript with the district court administrator, (b) deliver the transcript to counsel for the parties, and (c) file a certificate of transcript delivery with the clerk of the appellate courts via E-MACS.
4. The clerk of the appellate courts shall provide copies of this order to the Honorable Richard H. Kyle, Jr., counsel of record, the district court administrator, and court reporter Vanessa Melstrom.

Dated: June 11, 2019

BY THE COURT



Edward J. Cleary
Chief Judge